IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.1146 OF 2002

IN

COMPANY PETITION NO.980 OF 1999

Garware Shipping Corporation Ltd. ...Appellants

v/s

Shri Jaswant Singh ...Respondent

Mr A.Y. Sakhare, Sr. Counsel with Mr Rahul Chitnis i/b M/s V. Deshpande and Co. for Appellants.

None for Respondent.

CORAM : D.K. DESHMUKH AND J.H. BHATIA JJ.

DATE : 1ST NOVEMBER 2007.

P.C. :-

1. By this appeal, the appellants who are original respondents in company petition No.980 of 1999 challenge the order dated 5th August 2002 directing the appellants to deposit in this Court a sum of Rs.20,83,406/- with interest. The respondent herein had claimed in the petition that an amount of Rs.60,26,675/- with interest is due and payable by the appellant - Company to the respondent. Out of that amount, Rs.48,86,708/- was the amount of principal, the rest appears to be the amount of interest. This company petition was filed in the year 1999. The amounts were claimed as the charges for repairing of the seagoing vessel of the appellant Company. During the pendency of the company petition, summary suit No.4411 of 2001 was filed by the respondent claiming decree in the amount of Rs.31,34,341.64 with interest at the rate of 18 % p.a. on the principal sum of Rs.20,55,306/-. Thus, in the summary suit, an amount of Rs.20,55,306/- was claimed as the amount of principal. It is clear from the averments made in the plaint that the plaintiff was claiming that the principal amount of Rs.60,26,675/- was due but some of its claims were barred by the law of limitation. The respondents in the company petition had shown that the

payments under the following invoices are due to be received :-

Invoice / Bill No.	Date of Invoice	Due date of Invoice for	Amount on Invoice	Total amount together with interest @ 18% p.a. from due date
			Rs.	Rs.
3-98(18)	31-3-1998	20-4-1998	10,000/-	11,800/-
6-98(3)	4-6-1998	6-7-1998	34,58,858/-	39,25,803/-
6-98(3A)	4-6-1998	16-7-1998	11,11,922/-	12,62,030/-
6-98(8)	17-6-1998	25-6-1998	5,29,964/-	6,09,458/-
6-98(2)	1-9-1998	16-9-1998	23,345/-	25,796/-
9-98(6)	4-9-1998	4-9-1998	4,059/-	4,484/-
9-98(16)	4-9-1998	7-9-1998	18,25,477/-	20,17,151/-
9-98(23)	7-9-1998	9-9-1998	28,648/-	31,655/-
9-98(24)	8-9-1998	9-9-1998	5,63,129/-	6,22,257/-
10-98(2)	7-10-1998	12-10-1998	60,979/-	66,427/-
10-98(3)	9-10-1998	12-10-1998	8,72,152/-	9,50,645/-
10-98(6)	16-10-1998	20-10-1998	10,73,668/-	11,70,298/-
10-98(7)	16-10-1998	20-10-1998	19,892/-	21,682/-
10-98(8)	16-10-1998	20-10-1998	19,655/-	21,423/-
10-98(9)	16-10-1998	20-10-1998	8,960/-	9,766/-

. In the summary suit, amounts due under invoices from 7th October 1998 to 16th October 1998 were

claimed. In other words, by the time summary suit was filed, amounts due under the invoices from 31st March 1998 to 8th September 1998 were barred by the law of limitation. It appears that the summary suit came to be decreed ex-parte. Notice of motion No.1193 of 2002 was taken out for setting aside the ex-parte decree. That notice of motion was disposed off by the learned Single Judge of this Court by order dated 24th April 2002. By that order, the ex-parte decree was set aside subject to the condition of deposit of Rs.20,25,306/- in Court. It appears that thereafter, summons for judgment taken out by the respondents in summary suit No.4411 of 2001 was decided by the learned Single Judge of this Court by order dated 19th November 2003. In that order, after noting the fact that an amount of Rs.20,25,306/- has bee deposited in Court by the present appellants and that is the amount of principal claimed in the summary suit, leave to defend has been granted to the appellants. By order dated 17th December 2003 passed in notice of motion No.3656 of 2003, the respondent was permitted to withdraw the amount deposited by the appellants on furnishing bank guarantee but we have been informed that the respondent has not withdrawn the amount, with the result, the amount of Rs.20,25,306/- which is deposited by the appellants is lying to the credit of summary suit No.4411 of 2001. When order dated 5th August 2002 was passed in company petition directing the appellant -

Company to deposit an amount of Rs.20,83,406/- within a period of 12 weeks and the failure of the Company to deposit the amount would result in admission of the petition, it appears that the ex-parte decree was in force and it was yet to be set aside. We have been informed that by an interim order passed in this appeal, the appellants were directed to deposit an amount of Rs.20,83,406/- and that amount has been deposited by the appellants.

2. It is obvious from the order passed by the learned Single Judge that the learned Single Judge also found that an amount more than Rs.20,00,000/- may be payable by the appellants to the respondent and therefore to find out whether the appellant - Company has the capacity to pay the amount, conditional order was passed by the learned Single Judge. By their conduct by depositing the amount in this Court pursuant to the interim order passed in appeal as also depositing the amount in the summary suit, in our opinion, the appellants have established that it has capacity to pay their debts and therefore, it will not be appropriate to admit the company petition against it. The learned Single Judge had directed the appellants to deposit Rs.20,83,406/- in this Court. Against the same claim, amount of Rs.20,25,306/- has been deposited by the appellants. Therefore, in our opinion, it will not be

appropriate to continue the amount lying in this Court which is deposited pursuant to the interim order passed in the appeal. In our opinion, following order would meet the ends of justice.

3. The appeal is allowed. The order impugned in the appeal is set aside. If any amount is deposited by the appellants pursuant to the interim order passed int his appeal shall be permitted to be withdrawn by the appellants with accruals thereon if any.

. Prothonotary and Senior master of this Court and parties to act on the copy of this order duly authenticated by the Associate / Private Secretary of the Court.

. Certified copy expedited.

(D.K. DESHMUKH J.)

(J.H. BHATIA J.)